

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2865 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.A. MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHANTILAL KESHAVLAL SHAH

Versus

BANK OF BARODA

Appearance:

MR JK PARMAR for Petitioner

MR DARSHAN M PARIKH for Respondent No. 1, 2

CORAM : MR.JUSTICE R.A. MEHTA

Date of decision: 07/04/98

ORAL JUDGEMENT

1. The petitioner, a bank officer has raised a dispute regarding his birth date. According to him his correct birth date is 14.3.1934 and therefore he should have been continued in service till the end of March 1994 but he has been retired at the end of March 1993 on the ground that according to the respondent bank, his birth

date is 14.3.1933 and not 14.3.1934.

2. When the petitioner entered bank service in 1955, his age was 22 years and he had also produced at the time of joining service the SSC certificate showing his birth date as 14.3.1933.

3. On 7.9.61 he made an application to the General Manager, Bank of Baroda, Baroda, stating that his birth date was recorded in the service book on the strength of SSC certificate submitted by him, i.e., 14.3.1933. According to him that date was not correct and his father while getting him admitted to the primary school gave this wrong date with faint memory. He stated that his correct birth date is 14.3.1934 as per his horoscope and therefore he sought correction of his birth date. This letter is at page 61 of the compilation. This letter of 7.9.1961 was considered within a week and by a letter dated 12.9.61, the General Manager informed the Surat Branch where the petitioner was working that the bank could not change the date of birth of the petitioner recorded on the basis of SSC certificate on the strength of the horoscope submitted by the petitioner. It was further stated that if the petitioner so desired he might make an affidavit in this behalf and the same be forwarded along with his birth certificate for doing the needful and the original horoscope was returned.

4. It is not in dispute that the horoscope has been received by the petitioner from Surat branch. However, according to petitioner, the Surat branch did not inform him anything about the rejection of his application or the suggestion to make an affidavit and submit it along with birth certificate. Of course, there is no documentary proof that the Surat branch had given any such intimation to the petitioner but the fact remains that the horoscope was returned to the petitioner as admitted by the petitioner himself. Even at the time of hearing the horoscope in question has been shown by the petitioner. It is therefore reasonable to presume that the Surat branch would have intimated the contents of the letter. Even otherwise, the petitioner would naturally have enquired as to what had happened to his request for change of birth date when the horoscope which was submitted along with the application was returned to him.

5. The petitioner was thereafter transferred to Indore branch and thereafter he was sent to Daresalam, East Africa. During this period it appears that he obtained a passport on the basis of a certificate issued by Branch Manager, Indore. The date of issuance of

passport is 3.10.1962. On the passport his date of birth was shown as 14.3.1934 on the basis of the certificate issued by the Branch Manager, Indore. It is stated by the petitioner that this certificate was issued on the basis of service record transferred from Surat Branch. However, it is clear that Surat branch or Indore branch could not have changed the date of birth when the Head Office had already rejected the request for correction of date of birth.

6. The petitioner has also produced a certificate issued by Gandhi Road Branch, Ahmedabad dated 1.9.1969 showing the date of birth of the petitioner as 14.3.1934 as per the record available with them. This is also not correct because the bank authorities have not corrected the date of birth of the petitioner by passing any order by any authority. The petitioner has also relied on a seniority list wherein against the name of the petitioner in the column of 'date of birth' date "14.3.1934" has been shown. Even this correction is also not an authorised one by any order of the bank authorities and it appears that the correction was shown contrary to the service record and apparently appears to be a mistake, as claimed by the respondent bank.

7. When the petitioner was informed about his impending retirement by letter 1.1.93 (page 22), the petitioner protested by letter dated 18.1.1993 (page 23) and it was contended that his horoscope was returned without any communication and therefore it meant that the bank had accepted the date of birth mentioned in the horoscope to be his correct date of birth, i.e., 14.3.1934. It was further contended that when he was transferred to Indore, his service particulars were sent to that branch and as per the service record available with Indore branch, he got a certificate showing his date of birth to be 14.3.1934 and that on that basis he had obtained a passport. This was replied by letter dated 2.2.1993 that as per the record available, his birth date was 14.3.1933 and accordingly he had been superannuated with effect from 31.3.1993.

8. He made an application to the Joint Civil Judge (J.D.) and J.M.F.C., Godhra under Section 13(3) of the Birth and Death Registration act without any respondent or contestant and the court passed an order declaring that the petitioner was born on 14.3.1934 and accordingly entries shall be made in the Birth and Death Register. This order was passed on 20.1.1993 and it appears that on this basis, the municipal authorities were persuaded to make the entry of 9.2.1993.

9. Learned counsel for the petitioner has relied on a judgment of this Court in the case of K.M.Jariwala v. Indian Petrochemicals Corporation Limited reported in 1993(2) GLR 1481. In that case, the original date of birth as noted in the birth certificate, the certificate of age, vaccination certificate, passport, insurance policy, identity card and service book shown as 5.2.37 later on changed by the employer behind the back of the petitioner without any notice to the petitioner and this was held to be unreasonable and arbitrary. In the present case, original birth date as recorded in the service book is 14.3.1933 as given by the petitioner himself and as per the SSC certificate. It is not the case here that the employer has changed that date of birth. Here, the petitioner is seeking correction of birth date but he had never obtained such an order for correction of the same by the respondents. Therefore this judgment has no application to the facts of the case at hand.

10. On the other hand the respondents have relied on a judgment in the case of Union of India v. C. Ramaswamy and others reported in (1997)4 SCC 647. In that case, an officer after joining the service made a representation for correction of the birth date on the basis of a horoscope. He had also obtained a certificate from the Registrar of Births and Deaths and he had applied for alteration of his birth date. However, that was rejected. Still in pursuit of his desire to get his date of birth altered he adopted a "novel" method. He filed a suit in the Court of District Munsif, Sholinghur impleading the Director of School Education, Madras; District Education Officer, Vellore and his eldest sister Kamala as defendants. He did not join the employer State of Andhra Pradesh or Union of India as parties and he obtained a decree and injunction that the date of birth should be corrected in the SSLC book so as to reflect the date of birth as being that of 15.6.41 instead of 17.6.39. Armed with the said correction he made a representation for alternation to the Union of India which came to be rejected. Having failed in a similar request made to Secretary, Department of Personnel, he approached the Central Administrative Tribunal. The Central Administrative Tribunal directed the respondents to change the date of birth and accordingly ordered to correct the same. Aggrieved by this, the respondents therein appealed before the Supreme Court and Their Lordships held that the date of birth could not have been ordered to be corrected by the Tribunal. In para 25 and 26 of the judgment, the Supreme Court held as follows:

"25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates as particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability."

"26. In such a case, even in the absence of a statutory rule like Rule 16-A, the principle of estoppel would apply and the authorities concerned would be justified in declining to alter the date of birth. If such a decision is challenged the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. Once having secured entry into the service, possibly in preference to other candidates, then the principle of estoppel would clearly be applicable and relief of change of date of birth can be legitimately denied. To

that extent the decision in Manak Chand case does not lay down the correct law."

In view of this judgment, it is absolutely clear that even when it is shown that the date of birth as originally recorded is incorrect, the petitioner is estopped from making such a claim.

Moreover, in the present case, the petitioner has tried to prove that his original date of birth was incorrect and the date claimed by him correct and in support of his claim he relied on his horoscope and it cannot be said that the horoscope is a satisfactory and conclusive proof of his birth date being 14.3.1934.

11. Even otherwise, the petition is hopelessly delayed. The petitioner was retired in 1993 and this petition is filed in 1997 and if the petitioner really felt aggrieved that he had been wrongly retired and injustice had been done to him, he should have filed the petition immediately. It is not that he was unaware of his claim, he has raised the dispute even before the date of his retirement in January/February, 1993. He has otherwise also filed a writ petition Special Civil Application No. 2133 of 1994, which is pending in this court.

In the aforesaid premises, the petition has no merit and fails. Petition is dismissed. Rule is discharged. No order as to costs.

(R.A. Mehta, J)

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